

# **EXHIBIT 1**

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**From:** Elizabeth Pollock Avery <Elizabeth@lcllp.com>  
**Sent:** Wednesday, January 3, 2024 5:02 PM  
**To:** Attridge, Elise M.; Lavelle, Jr., John P.; Feinstein, Wendy West; Dykstra, Lisa C.; Michael H. Steinberg (steinbergm@sullcrom.com); William B. Monahan (monahanw@sullcrom.com); Hight-sullcrom.com; laurenm@hbsslaw.com; Schutte, Scott T.; Baiocco, Dana  
**Cc:** Kelly Iverson; S Duggan; cseeger@seegerweiss.com; Steve Schwartz; DBuchanan@seegerweiss.com; sitri@seegerweiss.com; dstellings@lchb.com; vbuchanan@levinlaw.com; waudet@audetlaw.com; CSchaffer@lfsblaw.com; Kevin Hannon; Michael Ram x20021  
**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs  
**Attachments:** Complete\_with\_DocuSign\_11-2-23\_Paris\_Randy\_S.pdf; 2023.11.07 Boyle, Jeffrey SECOND AMENDED Response to Philips RS First Set of ROGS directed to MM Plaintiffs.pdf; 01.03.2024 QUINTON GOODALL SECOND AMENDED Responses to First Set of RFP.pdf; 01.03.2024 SHARON CATHERS SECOND AMENDED Responses to First Set of RFP.pdf; Quinton Goodall Care Orchestrator.pdf; Sharon Cathers Care Orchestrator.pdf

[EXTERNAL EMAIL]

Elise,

With respect to your December 20<sup>th</sup> email:

1. We will send our revisions to the consent motion in the next day or two.
2.
  - a. We are continuing to work on providing updated verifications.
  - b. Randy Paris's and Jeffrey Boyle's verifications are attached.
  - c. We will address in revisions to the consent motion.
  - d. Resolved.
3. Sean Purdy's responses to the second set of interrogatories were served on October 2.
4. Second Amended RFP responses for Goodall and Cathers are attached.
5. Care Orchestrator data releases for Sharon Cathers and Quinton Goodall are attached.
6. Plaintiffs are not available tomorrow to meet and confer re: Request Nos. 14, 31, and 38 and SD card issue. Do you have any availability next week?

With respect to your December 29<sup>th</sup> email:

We take issue with your suggestion that we have been inaccurate in our submission to the Court. We do not agree that an amended/corrected response to Philips RS's objections, nor a reply by Philips RS to our response, is necessary nor do we consent to the same. We correctly told the Court that Plaintiffs agreed to and have produced certain categories of documents in response to discovery requests that are not currently in dispute before the Court. It appears that you believe there are deficiencies with respect to those requests. This is the first that Defendants have raised the issue and any disagreement regarding the extent of documents produced is not ripe for resolution by the Court nor a subject of the R&R being objected to. Furthermore, Plaintiffs have provided releases for Philips to access Care Orchestrator data *that Philips already has in its custody*. You complain about our verbiage: data rather than release, but it is really a distinction without a difference. To the extent the Court misapprehends exactly what information was provided, that potential misapprehension can be resolved at oral argument on January 25.

ELIZABETH POLLOCK AVERY

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**From:** Attridge, Elise M. <[elise.attridge@morganlewis.com](mailto:elise.attridge@morganlewis.com)>  
**Sent:** Wednesday, January 3, 2024 10:25 AM  
**To:** Elizabeth Pollock Avery <[Elizabeth@lcllp.com](mailto:Elizabeth@lcllp.com)>; Lavelle, Jr., John P. <[john.lavelle@morganlewis.com](mailto:john.lavelle@morganlewis.com)>; Feinstein, Wendy West <[wendy.feinstein@morganlewis.com](mailto:wendy.feinstein@morganlewis.com)>; Dykstra, Lisa C. <[lisa.dykstra@morganlewis.com](mailto:lisa.dykstra@morganlewis.com)>; Michael H. Steinberg (steinbergm@sullcrom.com) <[steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)>; William B. Monahan (monahanw@sullcrom.com) <[monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)>; Hight-sullcrom.com <[Hight@sullcrom.com](mailto:Hight@sullcrom.com)>; laurenm@hbsslaw.com; Schutte, Scott T. <[scott.schutte@morganlewis.com](mailto:scott.schutte@morganlewis.com)>; Baiocco, Dana <[dana.baiocco@morganlewis.com](mailto:dana.baiocco@morganlewis.com)>  
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**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

Liz,

I am following up on my December 20 and December 29 emails, below. What is Plaintiffs' response?

Thanks,

**Elise M. Attridge**  
**Morgan, Lewis & Bockius LLP**

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**From:** Attridge, Elise M.  
**Sent:** Friday, December 29, 2023 3:28 PM

**To:** 'Elizabeth Pollock Avery' <[Elizabeth@lcllp.com](mailto:Elizabeth@lcllp.com)>; Lavelle, Jr., John P. <[john.lavelle@morganlewis.com](mailto:john.lavelle@morganlewis.com)>; Feinstein, Wendy West <[wendy.feinstein@morganlewis.com](mailto:wendy.feinstein@morganlewis.com)>; Dykstra, Lisa C. <[lisa.dykstra@morganlewis.com](mailto:lisa.dykstra@morganlewis.com)>; 'Michael H. Steinberg ([steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com))' <[steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)>; 'William B. Monahan ([monahanw@sullcrom.com](mailto:monahanw@sullcrom.com))' <[monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)>; [Hight-sullcrom.com](http://Hight-sullcrom.com) <[Hight@sullcrom.com](mailto:Hight@sullcrom.com)>; 'laurenm@hbsslaw.com' <[LaurenM@hbsslaw.com](mailto:LaurenM@hbsslaw.com)>; Schutte, Scott T. <[scott.schutte@morganlewis.com](mailto:scott.schutte@morganlewis.com)>; Baiocco, Dana <[dana.baiocco@morganlewis.com](mailto:dana.baiocco@morganlewis.com)>

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**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

Liz:

We are still waiting for a response to my December 20 email below.

In the meantime, however, we write to address inaccuracies in Plaintiffs' Response in Opposition to Defendant Philips RS' Objections to Special Discovery Master's Report and Recommendation (ECF No. 2402) ("Response") that need to be corrected. Specifically, Plaintiffs' Response asserts the following:

1. Request Nos. 2, 7, 12, 15, 17, 19, and 34 "are duplicative, especially because Plaintiffs have already produced responsive documents, including purchase receipts for Recalled and other CPAP devices, prescription information for Recalled Devices, cleaning instructions, accessory information and receipts, etc." See ECF No. 2402 at 8. This is incorrect:
  - a. To date, 5 out of 63 MM Plaintiffs have not produced any documents specific to their claims.
  - b. Of the MM Plaintiffs who have produced documents, approximately 30% have not produced "purchase receipts for Recalled and other CPAP devices, prescription information for Recalled Devices, cleaning instructions, accessory information and receipts."
  - c. By way of further example, approximately 87% have not produced "prescription information" documents.
2. The documents requested in Request No. 2 are "similarly irrelevant ... particularly when Plaintiffs have already produced the Care Orchestrator data." See ECF No. 2402 at 8. Again, this is false:
  - a. To date, zero MM Plaintiffs have produced Care Orchestrator data.
  - b. Some, but not all, MM Plaintiffs have executed releases for their Care Orchestrator data (to the extent it even exists), but those releases only enable Philips to start the laborious process of searching for and pulling this data. Besides, 14 MM Plaintiffs haven't even executed releases yet, which were due on December 8.
3. Plaintiffs shouldn't be compelled to produce medical records relating to the recall and MM Plaintiffs' notice of the recall "especially because Plaintiffs produced documents in response to this request, including recall notices issued by Philips itself." See ECF No. 2402 at 10. Only a small fraction of MM Plaintiffs have produced recall-related documents (approximately 25%), so this argument is misleading.

Therefore, we request that Plaintiffs either (a) file an amended/corrected response with the Court by January 4 or (b) consent to a motion for leave for Philips RS to file a reply to address these issues. Please let us know on January 2.

**Elise M. Attridge****Morgan, Lewis & Bockius LLP**

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**To:** 'Elizabeth Pollock Avery' <[Elizabeth@lcllp.com](mailto:Elizabeth@lcllp.com)>; Lavelle, Jr., John P. <[john.lavelle@morganlewis.com](mailto:john.lavelle@morganlewis.com)>; Feinstein, Wendy West <[wendy.feinstein@morganlewis.com](mailto:wendy.feinstein@morganlewis.com)>; Dykstra, Lisa C. <[lisa.dykstra@morganlewis.com](mailto:lisa.dykstra@morganlewis.com)>; Michael H. Steinberg <[steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)> <[steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)>; William B. Monahan <[monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)> <[monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)>; Hight-sullcrom.com <[Hight@sullcrom.com](mailto:Hight@sullcrom.com)>; Schutte, Scott T. <[scott.schutte@morganlewis.com](mailto:scott.schutte@morganlewis.com)>; lauren.m@hbsslaw.com

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**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

Liz:

The characterization of MM Plaintiffs' course of conduct in my December 11 email is accurate, given that we are still missing discovery responses and/or verifications from multiple MM Plaintiffs—in some cases, months after the deadline to serve them. By way of further response to your December 14 email:

1. We are still waiting to receive your edits to the joint consent motion and proposed order. Please let us know when we can expect to receive them. We would like to get this on file as soon as possible.
2. a) and b) We are still waiting to receive proper verifications for **twenty-four** MM Plaintiffs' second amended interrogatory responses, which were due on November 2. Please let us know when we can expect to receive them.
  - c) On December 11, we informed you that nine MM Plaintiffs failed to serve second amended responses, which were due on November 2. Since then, you served second amended responses for one MM Plaintiff. **Eight** are still outstanding. Please serve them as soon as possible, or include these plaintiffs in our joint consent motion.
  - d) We are able to open Mr. Nielson's second amended responses. Thank you for re-sending them.
3. On December 11, we informed you that it appears that Sean Purdy has not served responses to Philips RS's **Second** Set of Interrogatories. Mr. Purdy's amended responses to Philips RS's **First** Set of Interrogatories were served on October 26. Again, if we missed his responses to the Second Set, please let us know and provide the date they were served.

4. We are still waiting to receive second amended responses to RFP Nos. 9, 10, 21, 23, 24, and 25 from five MM Plaintiffs, which were due on December 8. Please let us know when we can expect to receive them.
5. MM Plaintiffs agreed to provide executed Care Orchestrator releases by December 8. We are still waiting to receive executed releases from thirteen MM Plaintiffs. Please provide us with a status update.

We are still waiting to receive your availability for a meet and confer regarding Requests No 14, 31, and 38, but propose the following dates/times: January 3 between 10 am and 12 pm ET and January 4 between 12 pm and 2 pm ET. Please let us know if anything within these windows works. Regarding your question about SD cards below, let's add that as a topic for our next meet and confer.

**Elise M. Attridge**

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**From:** Elizabeth Pollock Avery <[Elizabeth@lcllp.com](mailto:Elizabeth@lcllp.com)>

**Sent:** Thursday, December 14, 2023 4:26 PM

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**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

[EXTERNAL EMAIL]

Elise,

Your characterization of MM Plaintiffs' course of conduct is inaccurate and unnecessary.

MM Plaintiffs further respond as follows:

1. We are continuing to work on reviewing your revisions to the consent motion and will have our edits to your shortly.
2. a) We will provide updated verifications for these plaintiffs.  
b) Verifications for Boyle, Bartalo, Caling, Clauch, Dennett, Hamlin, and Morris are attached. We will provide the remainder of the verifications.  
c) Elizabeth Lemus's Second Amended ROG responses are attached. We will address the inclusion of the other plaintiffs in the motion when we respond to your revisions.

d) I've attached Nielson's responses again. Please let me know if you are unable to open these.

3. Sean Purdy's responses were served on October 26, 2023.
4. Second Amended RFP responses for Bakaitis, Bartalo, Bellotti, Claunch, Dennett, Dusza, Hamlin, Lemus, Malone, McDaniel, Morris, and Sweeney are attached.
5. 50 Care Orchestrator releases were served earlier today. I will continue to send these to you as we receive them.

I will get back to you regarding our availability for a meet and confer regarding Requests No 14, 31, and 38 shortly.

Lastly, an issue has arisen regarding the SD cards for several of the MM Plaintiffs which I believe requires a discussion between the parties. For these Plaintiffs, when they received their replacement devices, which they are currently using, they were instructed to remove their SD cards from their recalled devices and use the cards with the replacement devices. We can either add this topic to the meet and confer regarding RFPs 14, 31, and 38, or I am happy to discuss sooner if you would prefer.

**ELIZABETH POLLOCK AVERY**

Partner

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**From:** Attridge, Elise M. <[elise.attridge@morganlewis.com](mailto:elise.attridge@morganlewis.com)>

**Sent:** Monday, December 11, 2023 9:17 PM

**To:** Elizabeth Pollock Avery <[Elizabeth@lclp.com](mailto:Elizabeth@lclp.com)>; Lavelle, Jr., John P. <[john.lavelle@morganlewis.com](mailto:john.lavelle@morganlewis.com)>; Feinstein, Wendy West <[wendy.feinstein@morganlewis.com](mailto:wendy.feinstein@morganlewis.com)>; Dykstra, Lisa C. <[lisa.dykstra@morganlewis.com](mailto:lisa.dykstra@morganlewis.com)>; Michael H. Steinberg ([steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)) <[steinbergm@sullcrom.com](mailto:steinbergm@sullcrom.com)>; William B. Monahan ([monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)) <[monahanw@sullcrom.com](mailto:monahanw@sullcrom.com)>; Hight-sullcrom.com <[Hight@sullcrom.com](mailto:Hight@sullcrom.com)>; Schutte, Scott T. <[scott.schutte@morganlewis.com](mailto:scott.schutte@morganlewis.com)>; [lauren.m@hbsslaw.com](mailto:lauren.m@hbsslaw.com)

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**Subject:** RE: Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

Liz,

Consistent with MM Plaintiffs' course of conduct for the past ten months, MM Plaintiffs continue to serve discovery responses in piecemeal, incomplete, and tardy fashion. Your December 8 email below is no exception.

Specifically, here is a list of deficiencies that we ask MM Plaintiffs to resolve as soon as possible:

- 1) After Philips RS raised the issue with Special Master Katz, MM Plaintiffs agreed to serve amended responses to Philips RS's First Request for Production of Documents and to Interrogatory Nos. 2, 3, 4, 5, 7, and 8 of Philips RS's First Interrogatories, by August 30, 2023. As you know, to date, Sharon Cathers and Patricia Ragland have

failed to do so. Accordingly, we are attaching the consent motion and proposed order that you proposed, along with Philips RS's revisions thereto. We would like to get this on file this week.

- 2) MM Plaintiffs also agreed to serve second amended responses to Interrogatory Nos. 1(e), 6, and 9 by November 2, 2023. Numerous issues must be remedied:
  - a. While we received some responses that are properly verified, **twenty (20)** MM Plaintiffs served responses that are improperly verified in that the purported verification merely contains a typed signature that is not DocuSigned (Steve Abarr, Paul Bailey, Danny Baran, Danny David, Sonia Diaz, Christine DiJohn, Andrew Fisher, Christopher Glaub, Madaline Harbor, Jose Lopez, Diane Lamontagne, David Martin, Doris Margolet, Deanna Melcher, Paul Panzera, Antonio Perez Bonano, Sean Purdy, Cameron Rose, Chad Wells, and Jim Wolff).
  - b. **Eleven (11)** Medical Monitoring Plaintiffs served second amended responses with no verification at all (Susan Bakaitis, Jeffrey Bartalo, Jeffrey Boyle, Dennis Caling, Sarah Claunch, Joe David Dennett, Brent Hamlin, Elizabeth Heilman, Sabrina Malone, Dennis Morris, and Randy Paris).
  - c. To date, **nine (9)** Medical Monitoring Plaintiffs have failed to serve second amended responses at all (Bruce Ginsberg, Arthur Hibbard, Martin Humphries, Jill Leavenworth, Elizabeth Lemus, Robert Peebles, Patricia Ragland, Aaron Taylor, and Michael Wheeler). Given the lengthy passage of time since the November 2 deadline, we have revised the consent motion and proposed order to include these plaintiffs' second amended responses.
  - d. **One (1)** Medical Monitoring Plaintiff served second amended responses that we are unable to open (Patrick Nielson).
- 3) It appears that we never received responses to Philips RS's Second Interrogatories from Sean Purdy. If we missed these, please let us know and provide the date they were served.
- 4) MM Plaintiffs agreed to serve second amended responses to RFP Nos. 9, 10, 21, 23, 24, and 25 by December 8. **Seventeen (17)** MM Plaintiffs failed to do so (Susan Bakaitis, Hugo Barragan, Jeffrey Bartalo, Peter Bellotti, Dennis Caling, Sharon Cathers, Sarah Claunch, Joe David Dennett, Michael Dusza, Quinton Goodall, Brent Hamlin, Elizabeth Lemus, Sabrina Malone, Sylvia McDaniel, Dennis Morris, Patricia Ragland, and Marilyn Sweeney).
- 5) MM Plaintiffs also agreed to provide executed releases for their Care Orchestrator data by December 8. **All sixty-three (63)** MM Plaintiffs have failed to do so. Though the MM Plaintiffs who served second amended responses to RFP No. 9 state that their Care Orchestrator release is attached to their response, nothing is attached. MM Plaintiffs have not uploaded them to MDL Centrality, either.

Philips RS reserves all rights to seek schedule relief should MM Plaintiffs' failure to timely participate in discovery impact Philips RS's ability to comply with its discovery or expert deadlines.

Finally, as discussed during the October 30 meet and confer with Special Master Katz, Philips RS would like to schedule an additional meet and confer to discuss the deficiencies with MM Plaintiffs' responses to Request Nos. 14, 31, and 38. Please provide your availability to meet and confer during the weeks of January 2 and January 8.

**Elise M. Attridge**

**Morgan, Lewis & Bockius LLP**

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**Sent:** Friday, December 08, 2023 5:11 PM

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**Subject:** Philips CPAP Medical Monitoring Plaintiffs' Second Amended Responses to First Set of RFPs

[EXTERNAL EMAIL]

Counsel,

Please see attached the first rolling production of Medical Monitoring Plaintiffs' Second Amended RFP Responses.

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